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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SANTA CLARITA VALLEY WATER
AGENCY,

Plaintiff,

vs.

WHITTAKER CORPORATION and
DOES 1-10, Inclusive,

Defendants.

Case No.: 2:18-cv-6825

FIRST AMENDED COMPLAINT
FOR:

1. RECOVERY UNDER CERCLA [42 U.S.C. § 9607(a)];
2. DECLARATORY RELIEF UNDER CERCLA [42 U.S.C. § 9613(g)];
3. NEGLIGENCE;
4. NEGLIGENCE PER SE;
5. NUISANCE;
6. PUBLIC NUISANCE;
7. TRESPASS;
8. RECOVERY UNDER THE CALIFORNIA HAZARDOUS SUBSTANCE ACCOUNT ACT [CALIFORNIA HEALTH & SAFETY CODE §25300 ET SEQ.];
9. DECLARATORY RELIEF [28 U.S.C. §§ 2201 & 2202];
10. INJUNCTIVE RELIEF UNDER THE RESOURCE, CONSERVATION AND RECOVERY ACT [42 USC 6901 ET. SEQ.].

(DEMAND FOR JURY TRIAL)

INTRODUCTION

On November 29, 2000, Plaintiff Santa Clarita Valley Water Agency's ("Plaintiff") predecessors in interest (Castaic Lake Water Agency, Newhall County Water District, Santa Clarita Water Company and Valencia Water Company) filed a complaint naming, among others, Whittaker Corporation for releases of contamination, including perchlorate and volatile organic compounds ("VOC"), which include trichloroethylene ("TCE") and perchloroethylene ("PCE"), from the former Whittaker Bermite site (the "Whittaker Site") that impacted Plaintiff's domestic water supply wells.

In 2003, the Honorable Howard Matz issued a published opinion finding that Whittaker and others were liable under the Comprehensive Environmental Response, Compensation and Recovery Act ("CERCLA") for perchlorate contamination found in Plaintiff's water supply wells. Judge Matz' published opinion is attached as Exhibit "1."

In 2007, Whittaker entered into a settlement agreement with Plaintiff's predecessors ("2007 Settlement Agreement") in which Whittaker, *inter alia*, agreed to pay certain remediation costs for five production wells known to have perchlorate contamination ("Subject Wells"). The Settlement Agreement allows plaintiff to pursue claims for perchlorate contamination of wells which were not Subject Wells ("non-Subject Wells") and for VOC contamination, which was not released by the 2007 Settlement Agreement. In 2007, Judge Matz approved the Settlement Agreement and dismissed the case without prejudice as to the claims alleged herein.

In 2015, Whitaker entered into a separate settlement agreement with Plaintiff's predecessor, Valencia Water Company, to address perchlorate contamination in one of the non-Subject Wells that was not addressed by the 2007 Settlement Agreement ("2015 Settlement Agreement" - together, the 2007 Settlement Agreement and 2015 Settlement Agreement are "Whittaker Settlement

1 Agreements”). Since that time, other non-Subject Wells have been impacted by or
 2 threatened with perchlorate contamination. In addition, Subject Wells and non-
 3 Subject Wells have been impacted or threatened with VOC contamination. As a
 4 result, Plaintiff has incurred response costs and other damages and brings this
 5 action to address those claims.

6 Plaintiff alleges as follows:

7 JURISDICTION

8 1. The Court has jurisdiction over Plaintiff’s First and Second
 9 Claims for Relief pursuant to 28 U.S.C. § 1331 and section 113(b) of the
 10 Comprehensive Environmental Response, Compensation and Liability Act
 11 (“CERCLA”), 42 U.S.C. § 9613(b).

12 2. The Court has jurisdiction over Plaintiff’s Third, Fourth, Fifth,
 13 Sixth, Seventh and Eighth Claims for Relief pursuant to 28 U.S.C. § 1367(a).

14 3. The Court has jurisdiction over Plaintiff’s Ninth Claim for
 15 Relief pursuant to 28 U.S.C. § 1331 and, with respect to claims made under
 16 California statutory and common law, pursuant to 28 U.S.C. § 1367(a).

17 4. The Court has jurisdiction over Plaintiff’s Tenth Claim for
 18 Relief pursuant to 28 U.S.C. § 1331 and Section 7002(a) of the Resource
 19 Conservation and Recovery Act, 42 U.S.C. § 6972(a).

20 VENUE

21 5. This action involves properties located at or near 22116 West
 22 Soledad Canyon Road in the City of Santa Clarita.

23 6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)
 24 and 42 U.S.C. §§ 9607 & 9613(b) because the Whittaker Site is located within the
 25 Central District of California (“District”) and because at least some of the acts that
 26 gave rise to Plaintiff’s claims occurred in this District.

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1 **PLAINTIFF**

2 7. Plaintiff is a public agency organized and operating under the
3 laws of the State of California that does business within this District. Plaintiff
4 provides, sells, manages, and delivers surface water, groundwater, and recycled
5 water for municipal, industrial, domestic, and other purposes at retail and
6 wholesale, and is responsible for managing water resources to ensure adequate
7 water supply within the Santa Clarita Valley. Plaintiff is also a successor in
8 interest to *Castaic Lake Water Agency, Newhall County Water District, Santa*
9 *Clarita Water Company and Valencia Water Company.*

10 **DEFENDANTS**

11 8. Plaintiff is informed and believes, and on that basis alleges, that
12 defendant Whittaker is a corporation organized under the laws of the State of
13 Delaware and doing business within this District.

14 9. Does 1-10 are as yet unidentified entities and individuals who
15 are liable for any release or threatened release of hazardous substances and other
16 injurious conditions at or near the Whittaker Site. The true names or capacities of
17 the defendants sued under the fictitious names Does 1-10 are currently unknown to
18 Plaintiff. Plaintiff will amend this Complaint to add the true names and capacities
19 of these parties when they become known to Plaintiff.

20 **GENERAL ALLEGATIONS**

21 **Whittaker Site**

22 10. The Whittaker-Bermite site (the Whittaker Site aka the Bermite
23 facility) covers approximately 1,000 acres. Plaintiff is informed and believes, and
24 on that basis alleges, that Whittaker has produced ammunition, rockets, explosives,
25 flares, detonators and similar products (collectively, "Explosive Products") at the
26 Whittaker Site since at least 1943.

27 11. Plaintiff is informed and believes, and on that basis alleges, that
28 Whittaker Corporation is the successor to the assets and liabilities, including all

1 rights under certain insurance policies, of its predecessor entities. Whittaker's
2 predecessor entities include, but are not limited to, the following companies:
3 *Whittaker Bermite Corporation, Whittaker Porta Bella, Inc., Bermite Powder*
4 *Company, and Los Angeles Powder Company* (collectively referred to with the
5 Whittaker Corporation as "Whittaker").

6 12. Plaintiff is informed and believes, and on that basis alleges, that
7 Whittaker has owned the Whittaker Site since at least 1943 and manufactured
8 Explosive Products at the Whittaker Site from 1943 until at least 1987.

9 13. Together, Whittaker and Does 1-10 (collectively,
10 "Defendants") have produced the Explosive Products at the Whittaker Site for over
11 forty years.

12 14. Plaintiff is informed and believes, and on that basis alleges, that
13 Defendants' manufacture of Explosive Products involved the use and misuse and
14 storage of hazardous substances, such as perchlorate, TCE and PCE. In connection
15 with Defendants' use and misuse of hazardous substances over many years caused
16 numerous releases of such substances, including perchlorate, TCE and PCE, into
17 the soil and groundwater. Plaintiff is further informed and believes, and on that
18 basis alleges, that these releases (some of which were sudden and accidental) have
19 and are significantly contaminating the soil and groundwater at, underneath and
20 near the Whittaker Site. Plaintiff also is informed and believes, and on that basis
21 alleges, that Defendants' construction, movement of soil, and other activities on
22 the Whittaker Site have caused and are causing additional releases (some of which
23 were sudden and accidental) of hazardous substances that have contaminated and
24 are contaminating the soil and groundwater.

25 15. Plaintiff is informed and believes, and on that basis alleges, that
26 Defendants' releases of hazardous substances including perchlorate, TCE and PCE
27 are continuing with resultant contamination of the soil and groundwater.

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1 16. Plaintiff is informed and believes, and on that basis alleges, that
2 perchlorate contamination is rare and it has been consistently and predominantly
3 associated with the production of Explosive Products such as those manufactured
4 at the Whittaker Site and the chemical components for such products. Plaintiff is
5 also informed and believes that significant quantities of TCE and PCE were
6 released at the Whittaker site and migrated to Plaintiff's water supply wells along
7 with the perchlorate.

8 17. Plaintiff is informed and believes, and on that basis alleges, that
9 hazardous substance releases from the Whittaker Site have resulted in significant
10 impairment of the groundwater in the Santa Clarita Valley. As a result, Plaintiff is
11 required to comply, *inter alia*, with the California Department of Drinking Water
12 Policy 97-005 requirements for Direct Use of Extremely Impaired Sources to
13 continue utilizing the groundwater as a source of drinking water.

14 18. Plaintiff is informed and believes that the perchlorate
15 contamination from the Whittaker Bermite site continues to spread through the
16 groundwater toward other Plaintiff's wells and further investigation and studies are
17 required. Plaintiff is also informed and believes, and on that basis alleges,
18 Whittaker's response actions fail to address the significant levels of TCE and PCE
19 contamination that migrated from its site to groundwater used by Plaintiff.
20 Plaintiff is informed and believes, and on that basis alleges, that the scope of state
21 administrative orders and mandates issued to Whittaker do not (a) adequately
22 address the continuing spread of perchlorate contamination and (b) require
23 Whittaker to address TCE and PCE contamination in the groundwater that has
24 migrated from beneath the Whittaker Site.

25 19. There is ample evidence of intentional and outrageous
26 misconduct to support a claim for punitive damages. We briefly summarize the
27 pertinent facts.

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20. On information and belief, Whittaker's conduct with respect to its handling and disposal of hazardous waste at the Whittaker Bermite facility, and its disregard of accepted practices and legal requirements regarding the investigation and oversight of locations where hazardous wastes were present, was intentional and malicious. Whittaker acted or failed to act in conscious and callous disregard of the rights of others who might be injured or adversely affected as a result of its conduct. During the 1980s, Whittaker knowingly engaged in illegal practices regarding the handling and disposal of hazardous waste at the Whittaker Bermite Site. A non-exhaustive description of Whittaker's conduct is set forth in a June 22, 1987 memorandum prepared by Christopher F. Thompson, who, at the time, was one of Whittaker's environmental consultants. As reported by Mr. Thompson, Joe Alibrandi, who at the time was Whittaker's Chief Executive Officer, commented that it was only necessary to remove large, obvious waste material and drums of suspected hazardous materials from landfills and that other materials should be left buried in the ground. Mr. Alibrandi further observed that that there is no way to completely remove all the wastes from the facility so "why waste time or money getting more of it (the wastes) out." Mr. Alibrandi, according to Mr. Thompson, stated that there could be future problems with the on-site landfills for which Whittaker would have some liability. Mr. Alibrandi, who on information and belief was authorized to act on behalf of Whittaker, expressed the view that Whittaker and its consultants should leave non-obvious materials in landfills so that those would be addressed by an anticipated buyer and future developer of the property. Mr. Alibrandi did not appear overly concerned when told that delaying clean-up would greatly increase costs, presumably because buried liquid waste would continue to migrate through soil and groundwater. According to Mr. Thompson, Mr. Alibrandi stated that "if he cannot sell the property because of a contamination problem, he will write off the loss and will [give] the property to the EPA or maybe Tammy Bakker."

21. During the same time period, the Department of Toxic Substances Control's ("DTSC's") site inspector indicated that Whittaker was conducting "midnight cleanup" activities at hazardous waste locations at the facility without obtaining required regulatory approvals to avoid DTSC oversight in order to save money.

22. During the 1980s and contrary to legal requirements at the time, Whittaker failed to disclose the existence of and locations at the Whittaker Bermite facility where it disposed of hazardous wastes to EPA and DTSC.

23. DTSC's Criminal Investigation Branch with the assistance of the Los Angeles County District Attorney's office, executed a search warrant and seized 40,000 documents from Whittaker and its consultants, several of which provided evidence of deliberate concealment of material facts by Whittaker. In addition to the illegal activities above, DTSC uncovered evidence that Whittaker was conducting both onsite and offsite treatment and disposal activities of hazardous waste following the shutdown of manufacturing operations at the Whittaker Bermite site. Based on the investigation that DTSC conducted into Whittaker's activities at the Whittaker Bermite Site, the DTSC asked the Los Angeles District Attorney to file criminal charges against Whittaker.

FIRST CLAIM FOR RELIEF: Response Costs under CERCLA

(Against all Defendants)

24. Paragraphs 1-22 are incorporated herein by reference.

25. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, *inter alia*:

Notwithstanding any other provision of rule of law, and subject only to the defenses set forth in subsection (b) of this section –

(1) the owner and operator of a vessel or a facility,

1 (2) any person who at the time of disposal of
2 any hazardous substance owned or operated any facility
3 at which such hazardous substances were disposed of,

4 (3) any person who by contract, agreement, or
5 otherwise arranged for disposal or treatment, or arranged
6 with a transporter for transport for disposal or treatment,
7 or hazardous substances owned or possessed by such
8 person, by any other party or entity, at any facility or
9 incineration vessel owned or operated by another party or
10 entity containing such hazardous substances, and

11 (4) any person who accepts or accepted any
12 hazardous substances for transport to disposal or
13 treatment facilities, incineration vessels or sites selected
14 by such person, from which there is a release, or a
15 threatened release which causes the incurrence of
16 response costs, of a hazardous substance, shall be liable
17 for --

18 (A) all costs of removal or remedial action
19 incurred by the United States Government or a State or
20 an Indian tribe not inconsistent with the national
21 contingency plan;

22 (B) any other necessary costs of response
23 incurred by any other person consistent with the national
24 contingency plan;

25 (C) damages for injury to, destruction of,
26 or loss of natural resources, including the reasonable
27 costs of assessing such injury, destruction, or loss
28 resulting from such a release; and

1 (D) the costs of any health assessment or
2 health effects study carried out under section 9604(i) of
3 this title.

4 The amounts recoverable in an action under this section
5 shall include interest on the amounts recoverable under
6 subparagraphs (A) through (D).

7 26. Each Defendant is a “person” within the meaning of CERCLA
8 § 101(21), 42 U.S.C. § 9601(21).

9 27. The Whittaker Site is a “facility” within the meaning of
10 CERCLA § 101(9), 42 U.S.C. § 9601(9).

11 28. Plaintiff is informed and believes, and on that basis alleges, that
12 there have been releases (some of which were sudden and accidental) and
13 threatened releases of hazardous substances, including perchlorate, TCE and PCE,
14 at and from the Whittaker Site within the meaning of section 101(22) of CERCLA,
15 42 U.S.C. § 9601(22). Plaintiff is further informed and believes, and on that basis
16 alleges, that the releases are continuing.

17 29. Plaintiff has incurred and will incur necessary costs of response
18 pursuant to CERCLA §107(a), 42 U.S.C. § 9607(a), consistent with the National
19 Contingency Plan (“NCP”), as a result of releases and threatened releases (within
20 the meaning of CERCLA § 101(22), 42 U.S.C. § 9601(22)) of hazardous
21 substances at and from the Whittaker Site. On December 3, 2018, the Court
22 granted Whittaker’s motion to stay Plaintiff’s claim for future response costs
23 sought by this First Claim for Relief. Plaintiff restates the allegations of this
24 paragraph so that all allegations are contained in this First Amended Complaint in
25 the event that the Court lifts its stay.

26 30. Defendants are responsible persons defined in CERCLA §
27 107(a)(1), (2), (3), and/or (4), 42 U.S.C. § 9607(a)(1 – 4). Defendants are
28 therefore jointly and severally liable for all response costs incurred or to be

1 incurred by Plaintiff, not released by the Whitaker Settlement Agreements.

2 31. Prior to filing this Complaint, Plaintiff provided a copy of this
3 Complaint to the Attorney General of the United States and the Administrator of
4 the United States Environmental Protection Agency pursuant to CERCLA § 113(l),
5 42 U.S.C. § 9613(l).

6 **SECOND CLAIM FOR RELIEF: Declaratory Relief Under**

7 **CERCLA § 113(g)(2), 42 U.S.C. § 9613(g)(2))**

8 **(Against all Defendants)**

9 32. Paragraphs 1-22 are incorporated herein by reference.

10 33. CERCLA § 113(g)(2), 42 U.S.C. § 9613(g)(2), provides in
11 pertinent part:

12 In any action described in this subsection the court shall
13 enter a declaratory judgment on liability for response
14 costs or damages that will be binding on any subsequent
15 action or actions to recover further response costs or
16 damages.

17 34. An actual controversy now exists between Plaintiff and
18 Defendants, and each of them, in that Plaintiff contends that Defendants, and each
19 of them, are parties liable under CERCLA § 107(a), 42 U.S.C. § 9607(a) for all
20 response costs incurred and to be incurred by Plaintiff as a result of the releases or
21 threatened releases of hazardous substances, including perchlorate, TCE and PCE,
22 at and from the Whittaker Site. Plaintiff is informed and believes, and on that basis
23 alleges, that Defendants, and each of them, dispute such contentions in all respects.

24 35. A declaration of the rights and obligations of the parties
25 pursuant to CERCLA § 113(g)(2), 42 U.S.C. § 9613(g)(2), that exclude those
26 released under the Whitaker Settlement Agreements, binding in any subsequent
27 action or actions to recover further response costs incurred by Plaintiff, is
28 appropriate and in the interest of justice.

THIRD CLAIM FOR RELIEF: Negligence

(Against all Defendants)

36. Paragraphs 1-22 are incorporated herein by reference.

37. At all times referred to or mentioned herein, it was reasonably foreseeable that the groundwater which Plaintiff was entitled to pump and to use, and has pumped and used, for beneficial purposes would be polluted and contaminated, and would be significantly adversely impacted by releases at and from the Whittaker Site, of a "hazardous substance" within the meaning of that term as defined in CERCLA §101(14), 42 U.S.C. §9601(14).

38. At all times referred to or mentioned herein, Defendants, and each of them, owed and continue to owe Plaintiff a duty to exercise due care in their occupation, utilization, operation and maintenance of the Whittaker Site so as to avoid and prevent the release of hazardous substances onto and into the soil and groundwater at or near the Whittaker Site, and to prevent the hazardous substances present on the Whittaker Site from contaminating the soil at or near the Whittaker Site and the groundwater underlying the Whittaker Site and other nearby areas, including the areas from which Plaintiff's wells draw groundwater.

39. Plaintiff is informed and believes, and on that basis alleges, that the Defendants, and each of them, failed to exercise due or ordinary care and were negligent in (1) their handling and releases of hazardous substances on the Whittaker Site; (2) their efforts to locate and remove hazardous substances from the Whittaker Site; (3) their repair, maintenance and construction of buildings and other improvements at the Whittaker Site; (4) their movement of soils and other materials at the Whittaker Site; and (5) their management and supervision of the activities and operations on the Whittaker Site. Plaintiff is informed and believes, and on that basis alleges, that negligent acts and omissions by Defendants that injure Plaintiff are continuing to occur.

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1 40. The failure of Defendants, and each of them, to exercise due
2 and ordinary care with respect to the activities and matters set forth in Paragraph
3 34 above, resulted in substantial damage to Plaintiff by polluting and
4 contaminating the soil at and near the Whittaker Site, as well as the groundwater
5 underlying the Whittaker Site and other nearby lands, including groundwater that
6 supplies Plaintiff's water supply wells. These injuries are continuing.

7 41. As a proximate result of said negligent conduct, negligent
8 action, and negligent omissions of Defendants, and each of them, Plaintiff has
9 suffered and will continue to suffer substantial injury proximately caused by the
10 pollution and contamination of the groundwater underlying the Whittaker Site and
11 other nearby lands, including groundwater that supplies Plaintiff's water supply
12 wells. Plaintiff is informed and believes, and on that basis alleges, that the
13 pollution caused by Defendants, and each of them, has also contaminated the soil
14 on and near the Whittaker Site. Plaintiff will seek leave of this Court to amend this
15 Complaint to allege more precisely the damages incurred and sustained by Plaintiff
16 at such time as Plaintiff's total damages, not released by the Whittaker Settlement
17 Agreements, can so be determined. On December 3, 2018, the Court granted
18 Whittaker's motion to stay Plaintiff's claim for future damages sought by this
19 Third Claim for Relief. Plaintiff restates the allegations of this paragraph so that
20 all allegations are contained in this First Amended Complaint in the event that the
21 Court lifts its stay.

22 42. In engaging in the acts alleged above, the Defendants, and each
23 of them, were and are acting with full knowledge of the consequences and
24 damages being caused to Plaintiff, and the Defendants' conduct, was willful,
25 oppressive and malicious and in conscious disregard of the rights of Plaintiff.
26 Plaintiff is entitled to punitive damages against the Defendants, and each of them,
27 in an amount sufficient to punish the Defendants, and each of them, and make an
28 example of them.

FOURTH CLAIM FOR RELIEF: Negligence Per Se
(Against All Defendants)

43. Paragraphs 1-22 are incorporated herein by reference.

44. Plaintiff is informed and believes, and on that basis alleges, that Defendants, and each of them, knew or in the exercise of reasonable care should have known that their handling of various hazardous substances, including the Explosive Materials, at the Whittaker Site was subject to and regulated by federal and state statutes and/or local laws including, but not limited to, the following:

- (a) CERCLA, 42 U.S.C. § 9601 *et seq.*;
- (b) RCRA, 42 U.S.C. § 6901 *et seq.*;
- (c) Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*;
- (d) California Health and Safety Code § 25100 *et seq.*;
- (e) California Health and Safety Code § 25280 *et seq.*; and
- (f) California Water Code § 13300 *et seq.*

45. Plaintiff is informed and believes, and on that basis alleges, that the Manufacturing Defendants' use and release of hazardous substances, including perchlorate, TCE and PCE, at and from the Whittaker Site violates one or more of the statutes identified in paragraph 39 above. Each violation in and of itself, constitutes negligence per se. Contamination of the soil and groundwater on or near the Whittaker Site occurred as a proximate result of the conduct comprising each statutory violation. These statutes were designed to prevent such damage, and each statute was designed to protect parties such as the Plaintiff from such damage. Plaintiff is informed and believes, and on that basis alleges, that violations of such laws by Defendants are continuing to occur.

46. As a proximate result of the violations of the Defendants, and each of them, Plaintiff has been damaged, and will continue to be damaged, in an amount subject to proof at trial. On December 3, 2018, the Court granted

1 Whittaker's motion to stay Plaintiff's claim for future damages sought by this
 2 Fourth Claim for Relief. Plaintiff restates the allegations of this paragraph so that
 3 all allegations are contained in this First Amended Complaint in the event that the
 4 Court lifts its stay.

5 47. In engaging in the acts alleged above, the Defendants, and each
 6 of them, were and are acting with full knowledge of the consequences and
 7 damages being caused to Plaintiff, and such Defendants' conduct was and is
 8 willful, oppressive and malicious and in conscious disregard of the rights of
 9 Plaintiff. Plaintiff is entitled to punitive damages against such Defendants, and
 10 each of them, in an amount sufficient to punish such Defendants, and each of them,
 11 and make an example of them.

12 **FIFTH CLAIM FOR RELIEF: Private Nuisance**

13 **(Against all Defendants)**

14 48. Paragraphs 1-22 are incorporated herein by reference.

15 49. California Civil Code § 3479 defines a nuisance as follows:

16 Anything which is injurious to health, or is indecent or
 17 offensive to the senses, or an obstruction to the free use
 18 of property, so as to interfere with the comfortable
 19 enjoyment of life or property . . . is a nuisance.

20 The nuisance created by Defendants is of a continuing nature.

21 50. During their ownership of or activities at the Whittaker Site,
 22 Defendants created and allowed to continue conditions which constitute a private
 23 nuisance by permitting the release of hazardous substances, including perchlorate,
 24 TCE and PCE, at and from the Whittaker Site.

25 51. By intentionally and/or negligently causing a nuisance by
 26 contaminating the soil and groundwater at or near the Whittaker Site, Defendants'
 27 actions have injured Plaintiff.

28 52. The above-described nuisance relating to the Whittaker Site has

1 interfered with Plaintiff's use and enjoyment of its property, and has created a risk
2 to human health and the environment.

3 53. Defendants, and each of them, have refused or otherwise failed
4 to abate this nuisance.

5 54. Plaintiff has incurred and will continue to incur substantial
6 damages because of the nuisance. Plaintiff will seek leave of this Court to amend
7 this Complaint when its total damages, excluding those released by the Whittaker
8 Settlement Agreements, can be more precisely ascertained. On December 3, 2018,
9 the Court granted Whittaker's motion to stay Plaintiff's claim for future damages
10 sought by this Fifth Claim for Relief. Plaintiff restates the allegations of this
11 paragraph so that all allegations are contained in this First Amended Complaint in
12 the event that the Court lifts its stay.

13 55. The nuisance created by Defendants can be reasonably abated
14 with existing technology. Defendants, and each of them, can and should use this
15 technology to abate the nuisance.

16 56. While Whittaker has recently undertaken on-site clean-up
17 activities in response to a DTSC unilateral administrative order, past hazardous
18 waste disposal practices to soil and groundwater of the Defendants, and each of
19 them, were and are willful, oppressive, fraudulent, malicious, and in conscious
20 disregard of the rights of Plaintiff. Plaintiff is therefore entitled to an award of
21 punitive damages against Defendants, and each of them, in an amount sufficient to
22 punish the Defendants, and each of them, and make an example of them.

23 57. On December 3, 2018, the Court granted Whittaker's motion to
24 stay Plaintiff's claim for injunctive relief on this Fifth Claim for Relief. Plaintiff
25 restates the allegations of this paragraph so that all allegations are contained in this
26 First Amended Complaint in the event that the Court lifts its stay. Defendants, and
27 each of them, by continually releasing and/or permitting to be released hazardous
28 substances from the Whittaker Site into the groundwater surrounding the Whittaker

1 Site, have and are irreparably injuring Plaintiff. Plaintiff has no adequate remedy
 2 at law for these injuries. Therefore, Plaintiff is entitled to an injunction requiring
 3 Defendants to promptly abate the release and threat of releases of hazardous
 4 substances including perchlorate, TCE and PCE. Specifically, Plaintiff seeks an
 5 injunction that will require the Defendants to immediately remediate the hazardous
 6 substances released from the Whittaker Site that has contaminated groundwater
 7 near the Whittaker Site, to remediate the contaminated water in Plaintiff's supply
 8 wells and to abate any continuing contamination of the environment by the
 9 Whittaker Site.

10 **SIXTH CLAIM FOR RELIEF: Public Nuisance**

11 **(Against all Defendants)**

12 58. Paragraphs 1-22 are incorporated herein by reference.

13 59. The nuisance described above threatens to affect the community
 14 in and around the Whittaker Site. Plaintiff is informed and believes, and thereon
 15 alleges, that the contamination caused by Defendants can migrate to groundwater
 16 subject to use and actually being used by third parties. Abatement of the
 17 contamination caused by Defendants will prevent the contamination from affecting
 18 the property and groundwater being used by third parties and/or the general public.
 19 Absent such abatement, the nuisance caused by Defendants' actions will continue
 20 to impair the public's right to the beneficial use, whether actual or potential, of the
 21 groundwater and land.

22 60. Plaintiff has incurred and continues to incur special injuries as a
 23 direct and proximate result of this public nuisance, injuries which the general
 24 public has not suffered. For example, Plaintiff has suffered injury and costs as a
 25 direct and proximate result of the contamination in their water wells. In light of
 26 Defendants' continued refusal to take the necessary action required to abate the
 27 nuisance, Plaintiff has been forced to commence this action. On December 3,
 28 2018, the Court granted Whittaker's motion to stay Plaintiff's claim for future

1 damages sought by this Sixth Claim for Relief. Plaintiff restates the allegations of
2 this paragraph so that all allegations are contained in this First Amended
3 Complaint in the event that the Court lifts its stay.

4 61. The acts of the Defendants to release hazardous substances into
5 the groundwater, and each of them, were and are willful, oppressive, fraudulent,
6 malicious, and in conscious disregard of the rights of Plaintiff. Plaintiff is
7 therefore entitled to an award of punitive damages against Defendants, and each of
8 them, in an amount sufficient to punish the Defendants, and each of them, and
9 make an example of them.

10 62. The public nuisance created by Defendants can be reasonably
11 abated with existing technology. Defendants, and each of them, can and should
12 use this technology to abate the nuisance.

13 63. On December 3, 2018, the Court granted Whittaker's motion to
14 stay Plaintiff's claim for injunctive relief on this Sixth Claim for Relief. Plaintiff
15 restates the allegations of this paragraph so that all allegations are contained in this
16 First Amended Complaint in the event that the Court lifts its stay. Defendants, and
17 each of them, by continually releasing and/or permitting to be released hazardous
18 substances into the groundwater and soil in the area surrounding the Whittaker
19 Site, have and are irreparably injuring Plaintiff. Plaintiff has no adequate remedy
20 at law for these injuries. Therefore, Plaintiff is entitled to an injunction requiring
21 Defendants to promptly abate the release and threat of releases of hazardous
22 substances including perchlorate, TCE and PCE. Specifically, Plaintiff seeks an
23 injunction that will require the Defendants to immediately remediate the
24 contaminated groundwater impacted by the Whittaker Site and abate any
25 continuing contamination of the environment by the Whittaker Site.

26 **SEVENTH CLAIM FOR RELIEF: Trespass**

27 **(Against all Defendants)**

28 64. Paragraphs 1-2 are incorporated herein by reference.

65. On December 3, 2018, the Court granted Whittaker's motion to dismiss Plaintiff's Seventh Claim for Relief for Trespass without leave to amend and, for that reason, Plaintiff has deleted those allegations from this amended complaint. Plaintiff will move for reconsideration of that ruling and will seek leave of court to amend its allegations. If the Court grants the requested relief, Plaintiff will again amend its complaint and will re-allege this Claim for Relief.

EIGHTH CLAIM FOR RELIEF: Response Costs Under HSAA

(Against all Defendants)

66. Paragraphs 1-2 are incorporated herein by reference.

67. The California Hazardous Substance Account Act ("HSAA"), Cal. Health & Safety Code § 25300 *et seq.* provides for an action by parties who have incurred removal or remediation costs under the HSAA. Pursuant to the HSAA, such parties may seek contribution or indemnity for those costs from any person who is a liable person within the meaning of Health & Safety Code § 25323.5. Defendants are persons who are liable under such sections within the meaning of section 25323.5 of the California Health & Safety Code.

68. Plaintiff has incurred and will continue to incur necessary response costs with respect to the contamination caused by Defendants.

69. Plaintiff is informed and believes, and on that basis alleges, that the response actions undertaken by Plaintiff has been or will be pursuant to federal and state authorization and approval under CERCLA, and are or will be consistent with the NCP.

70. Plaintiff has satisfied any and all conditions precedent under California law or otherwise to the undertaking of response actions and incurring of response costs related to the Whittaker Site and the recovery of such costs from the Defendants.

71. Pursuant to California Health & Safety Code § 25363(e), the Defendants, and each of them, are liable to Plaintiff for all of the response costs,

1 excluding those released by the Whittaker Settlement Agreements, incurred or to
 2 be incurred as a result of the releases at and from the Whittaker Site, together with
 3 interest thereon, at the maximum rate allowed by law. On December 3, 2018, the
 4 Court granted Whittaker's motion to stay Plaintiff's claim for future response costs
 5 sought by this Eighth Claim for Relief. Plaintiff restates the allegations of this
 6 paragraph so that all allegations are contained in this First Amended Complaint in
 7 the event that the Court lifts its stay.

8 **NINTH CLAIM FOR RELIEF: Declaratory Relief**

9 **(Against all Defendants)**

10 72. Paragraphs 1-22 are incorporated herein by reference.

11 73. An actual legal controversy now exists between Plaintiff on the
 12 one hand, and Defendants, on the other hand. Plaintiff seeks a judicial declaration
 13 of their rights with respect to the Defendants pursuant to 28 U.S.C. § 2201.

14 Plaintiff contends that Defendants are liable to Plaintiff under CERCLA, HSAA,
 15 and the state and common law claims alleged in this Complaint. Plaintiff further
 16 contends that Defendants are obligated to reimburse Plaintiff for their past, current
 17 and future response costs and other damages. Plaintiff is informed and believes,
 18 and on that basis alleges, that Defendants contend in all respects to the contrary.

19 74. A declaratory judgment is appropriate for numerous reasons
 20 including the fact that a declaratory judgment will obviate the need for time-
 21 consuming multiple lawsuits as Plaintiff incurs costs in cleaning up the
 22 contamination caused by Defendants, thereby providing a complete resolution of
 23 the differences between the parties.

24 **TENTH CLAIM FOR RELIEF: Injunctive Relief under RCRA**

25 **(Against all Defendants)**

26 75. Paragraphs 1-22 are incorporated herein by reference.

27 76. Section 7002 of RCRA, 42 USC § 6972(a), provides that:

28 "[A]ny person may commence a civil action on his own behalf

1 . . . against any person, . . . including any past or present
 2 generator, past or present transporter, or past or present owner
 3 or operator of a treatment, storage, or disposal facility, who has
 4 contributed or who is contributing to the past or present
 5 handling, storage, treatment, transportation, or disposal of any
 6 solid or hazardous waste which may present an imminent and
 7 substantial endangerment to health or the environment.”

8 77. Further, Section 7002 of RCRA, 42 USC § 6972(e) provides that:

9 “The court . . . may award costs of litigation (including
 10 reasonable attorney and expert witness fees) to the prevailing or
 11 substantially prevailing party, whenever the court determines
 12 such an award is appropriate. The court may [also grant] a
 13 temporary restraining order or preliminary injunction”

14 78. Each Defendant is a “person” within the meaning of RCRA § 6903
 15 (15).

16 79. Each Defendant has contributed to or is contributing to the
 17 handling, storage, treatment, transportation, or disposal of any solid or hazardous
 18 waste.

19 80. Defendants’ disposal of hazardous waste has, *inter alia*,
 20 contaminated the groundwater between the Whittaker Site and Plaintiff’s supply
 21 wells. The high concentrations of TCE and PCE between, near and in Plaintiff’s
 22 wells pose an imminent and substantial endangerment to the groundwater used to
 23 provide safe drinking water to Santa Clarita Valley consumers.

24 81. Plaintiff is informed and believes that although the California
 25 DTSC has commenced administrative actions against Defendants to address
 26 contamination at the Whittaker Site, DTSC has not required Defendants to
 27 remediate the TCE and PCE contamination in the groundwater that has migrated
 28 from the Whittaker Site toward Plaintiff’s wells and thus Plaintiff’s claim is

1 permitted under RCRA § 6972(b)(2)(B)(iv). Plaintiff is also informed and believes
2 that DTSC's administrative actions do not adequately address the continuing
3 spread of perchlorate contamination to Plaintiff's other wells.

4 82. Plaintiff seeks an injunction that will require the Defendants to
5 immediately remediate the contaminated soil and groundwater below and near the
6 Whittaker Site and stop any continuing contamination of the environment by the
7 Whittaker Site. Plaintiff will also seek its costs of litigation (including reasonable
8 attorney and expert witness fees) as the court determines is appropriate.

9 83. Prior to filing this Complaint, Plaintiff provided a 60 day and
10 90 day notice of violation and intent to sue to: (1) Whittaker, (2) the Attorney
11 General of the United States, (3) the Administrator of the United States
12 Environmental Protection Agency, (4) the Director of the California Department of
13 Toxic Substances Control, (5) the Secretary of California Environmental
14 Protection Agency, (6) the Chairman of the Los Angeles Regional Water Quality
15 Control Board and the Chairman of the State Water Resources Control Board
16 pursuant to RCRA § 6972(b)(1)(A) and (b)(2)(A).

17 WHEREFORE, Plaintiff prays for judgment against Defendants as
18 follows:

19 **FIRST CLAIM FOR RELIEF**

20 1. For payment of all necessary costs of response, removal and
21 remedial action costs, costs of abatement and liability incurred by Plaintiff as a
22 result of any release or threatened release of hazardous substances at the Whittaker
23 Site, excluding those released by the Whittaker Settlement Agreements.

24 **SECOND CLAIM FOR RELIEF**

25 1. For a declaratory judgment that Defendants are jointly and
26 severally liable for all (or some portion) of any costs, damages and liability, not
27 released by the Whittaker Settlement Agreements, Plaintiff may incur as a result of
28 any release or threatened release of hazardous substances at the Whittaker Site.

2. For a declaratory judgment that Defendants are jointly and severally liable for all costs, damages and liabilities incurred by Plaintiff associated with perchlorate, TCE and PCE contamination within the Santa Clarita Valley.

THIRD CLAIM FOR RELIEF

1. For such actual damages as may be proven at trial;
2. For such incidental and consequential damages as may be proven at trial; and
3. For such punitive damages as may be proven at trial.

FOURTH CLAIM FOR RELIEF

1. For such actual damages, not released by the Whittaker Settlement Agreements, as may be proven at trial;
2. For such incidental and consequential damages, not released by the Whittaker Settlement Agreements, as may be proven at trial; and
3. For such punitive damages as may be proven at trial.

FIFTH CLAIM FOR RELIEF

1. For such actual damages, not released by the Whittaker Settlement Agreements, as may be proven at trial;
2. For such incidental and consequential damages, not released by the Whittaker Settlement Agreements, as may be proven at trial;
3. For such punitive damages as may be proven at trial; and
4. In the event that the Court lifts or modifies the stay entered December 3, 2018, for an injunction ordering Defendants to remediate and abate all contamination and threats of contamination caused releases at the Whittaker Site.

SIXTH CLAIM FOR RELIEF

1. For such actual damages, not released by the Whittaker Settlement Agreements, as may be proven at trial;
2. For such incidental and consequential damages, not released by

1 the Whittaker Settlement Agreements, as may be proven at trial;

2 3. For such punitive damages as may be proven at trial; and

3 4. In the event that the Court lifts or modifies the stay entered
4 December 3, 2018, for an injunction ordering Defendants to remediate and abate
5 all contamination and threats of contamination caused by releases at the Whittaker
6 Site.

7 **SEVENTH CLAIM FOR RELIEF**

8 1. Please refer to allegations in Paragraph 65 above.

9 **EIGHTH CLAIM FOR RELIEF**

10 1. For payment of all necessary costs of response, removal and
11 remedial action costs, costs of abatement and liability incurred by Plaintiff, not
12 released by the Whittaker Settlement Agreements, as a result of any release or
13 threatened release of hazardous substances at the Whittaker Site.

14 **NINTH CLAIM FOR RELIEF**

15 1. For a declaratory judgment that Defendants are liable for all
16 costs, damages and liability, not released by the Whittaker Settlement Agreements,
17 Plaintiff may incur as a result of any release or threatened release of hazardous
18 substances from the Whittaker Site;

19 2. For a declaratory judgment that Defendants are strictly liable
20 under the law governing continuing public nuisances for Plaintiff's costs of
21 abatement of the nuisances caused by releases and threats of releases or hazardous
22 substances from the Whittaker Site, that were not released by the Whittaker
23 Settlement Agreements;

24 3. For a declaratory judgment that Defendants are strictly liable
25 under the law governing continuing private nuisances for Plaintiff's costs, not
26 released by the Whittaker Settlement Agreements, of abatement of the nuisances
27 caused by releases and threats of releases or hazardous substances from the
28 Whittaker Site;

1 4. For a declaratory judgment that Defendants are strictly liable
2 for all damages, not released by the Whittaker Settlement Agreements, caused by
3 Defendants and for Plaintiff's costs of abatement because of Defendants'
4 continuing trespasses against Plaintiff; and

5 5. For a declaratory judgment that Defendants are liable for all
6 costs, damages and liabilities, not released by the Whittaker Settlement
7 Agreements, associated with perchlorate contamination within the Santa Clarita
8 Valley.

9 **TENTH CLAIM FOR RELIEF**

10 1. For an injunction ordering Defendants to remediate and stop all
11 contamination and threats of contamination caused by the Whittaker Site.

12 2. For all costs of litigation (including reasonable attorney fees
13 and expert witness fees) as the court determines appropriate pursuant to RCRA §
14 6972(e).

15 **ON ALL CLAIMS FOR RELIEF**

16 1. For Plaintiff's costs of suit herein;
17 2. For interest on any money judgment;
18 3. For Plaintiff's reasonable attorneys' fees; and
19 4. For such other and further relief as the Court may deem just and
20 proper.

21 Dated: December 27, 2018. NOSSAMAN LLP
22 FREDERIC A. FUDACZ
23 BYRON P. GEE

24
25 By: /S/ BYRON P. GEE

26 BYRON P. GEE
27 Attorneys for Plaintiff Santa Clarita Valley Water
28 Agency

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Dated: December 27, 2018. NOSSAMAN LLP

FREDERIC A. FUDACZ
BYRON P. GEE

By: /S/ BRYON P. GEE
BYRON P. GEE